Attorney's Docket: 2001US405
Serial No.: 10/002,710
Group: 1615

REMARKS

The Office Action mailed August 23, 2005, has been carefully considered together with each of the references cited therein. The remarks presented herein are believed to be fully responsive to the Office Action. Accordingly, reconsideration of the present Application in view of the following remarks is respectfully requested.

Claim Rejections Under 35 USC § 103(a)

Claims 1-9 and 11-19 stand rejected under 35 USC § 103(a) as being unpatentable over LeGrow et al. (US 5,932,231) in view of JP 012686615. This rejection is respectfully traversed.

The Office maintains the position that it would be obvious to one with ordinary skill in the art to combine LeGrow et al. with JP '615 to arrive at the presently claimed invention. Applicants can not agree.

The Office, on page 3 of the Office Action, states "the expectation of success is the ability of a larger molecular weight molecule to form an emulsion so that a smaller molecule would reasonable form an emulsion." The implication of this statement seems to be that JP '615 discloses an emulsion comprising polymethylsilsesquioxanes and a skilled artisan, knowing this disclosure would therefore assume that the smaller trimethylsilsesquioxanes of LeGrow would also form emulsions.

Respectfully stated, Applicants continue to be of the position that one with ordinary skill in the art having knowledge of both LeGrow and JP '615 would derive no motivation there from to arrive at the presently claimed invention. Specifically, it is Applicants' courteous belief that the Office position is predicated on the erroneous assumption that the substances of JP'615 and LeGrow are very similar. The references, however disclose completely different silicone compounds. As a result, no one with ordinary

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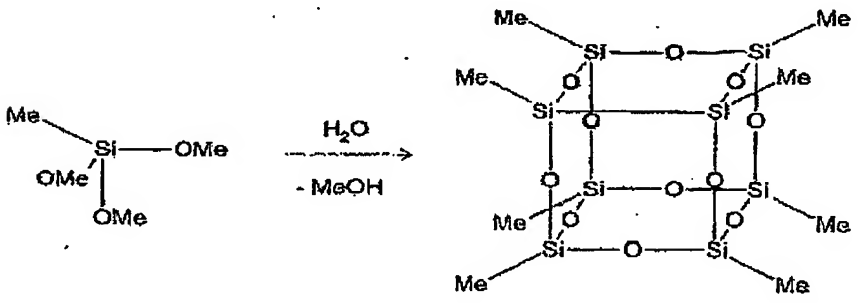
skill in the art having a knowledge of the cited references would combine the disclosures of JP'615 and LeGrow in the manner proposed by the Office.

Concerning JP '615, this reference teaches "polymethylsilsesquioxanes." According to the International Cosmetic Dictionary and Handbook, page 1442 (a copy of which is attached for the convenience of the Office) this material is a polymer formed by the hydrolysis and condensation of methyltrimethoxysilane. Methyltrimethoxysilane, Me-$Si(OMe)_3$ comprises three reactive methoxy groups MeO. It will form three dimensional products. The smallest and the most regular three dimensional product would be a cube formed by eight molecules of methyltrimethoxysilane:



The actual structure of polymethylsilsesquioxanes is a much bigger three dimensional network, i.e. it is much more complicated than as shown in the cubic structure.

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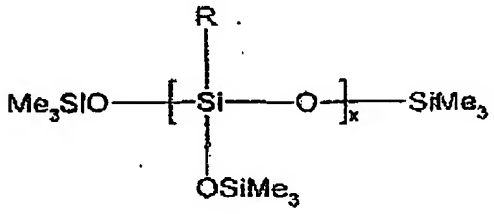
Turning to LeGrow, LeGrow discloses substances of the formula Me_3SiO-(Me_3-SiORSiO)$_x$-$SiMe_3$. If this formula is shown in a two dimensional form, one realizes that it is a branched molecule as shown below.



wherein R is n-octyl, i.e. $CH_3CH_2CH_2CH_2CH_2CH_2CH_2CH_2$-. As the Office will undoubtedly recognize, the chemical structures disclosed in the references of record are completely disparate and unrelated chemical compounds. One with ordinary skill in the chemical arts is undoubtedly aware that substances with completely different structures almost invariably have different properties.

In consequence, one with ordinary skill in the art having a knowledge of both JP'615 and LeGrow would find no motivation from these references to conclude that the trimethylsilylalkylsilsesquioxane could be used in a leave on composition in emulsion form. The chemical structures presented by these references undoubtedly would not provide the motivation necessary for one with ordinary skill in the art to prepare the formulation of LeGrow as an emulsion according to JP '615. Courteously stated, the emulsion in accordance with JP'615 is accomplished with a completely disparate,

unrelated chemical entity which no ordinary artisan would conclude could be replaced with the structure of LeGrow without necessarily having a knowledge of Applicants' disclosure.

In light of these completely disparate chemical entities set forth by the prior art of record, it is Applicants' position that no motivation can be derived there from which would led one with ordinary skill in the art to conclude that one composition capable of forming an emulsion could be substituted by another completely separate and structurally different compound and arrive at an emulsion. For at least this reason, Applicants courteously continue to contend that the Office's position is predicated upon the use of impermissible hindsight gained by a knowledge of Applicants' disclosure.

For at least these reasons, Applicants respectfully contend that the present invention is not made obvious by LeGrow and JP'615, alone, or in combination. In consequence, Applicants respectfully request reconsideration and withdrawal of the rejection.

As the total number of claims does not exceed the number of claims originally paid for, no fee is believed due. However, if an additional fee is required, the Commissioner is hereby authorized to credit any overpayment or charge any fee deficiency to Deposit Account No. 03-2060.

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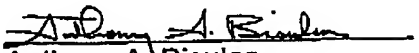
In view of the forgoing remarks, the Application is believed to be in condition for allowance, and reconsideration of it is requested. If the Examiner disagrees, she is requested to contact the attorney for Applicants at the telephone number provided below.

Respectfully submitted,



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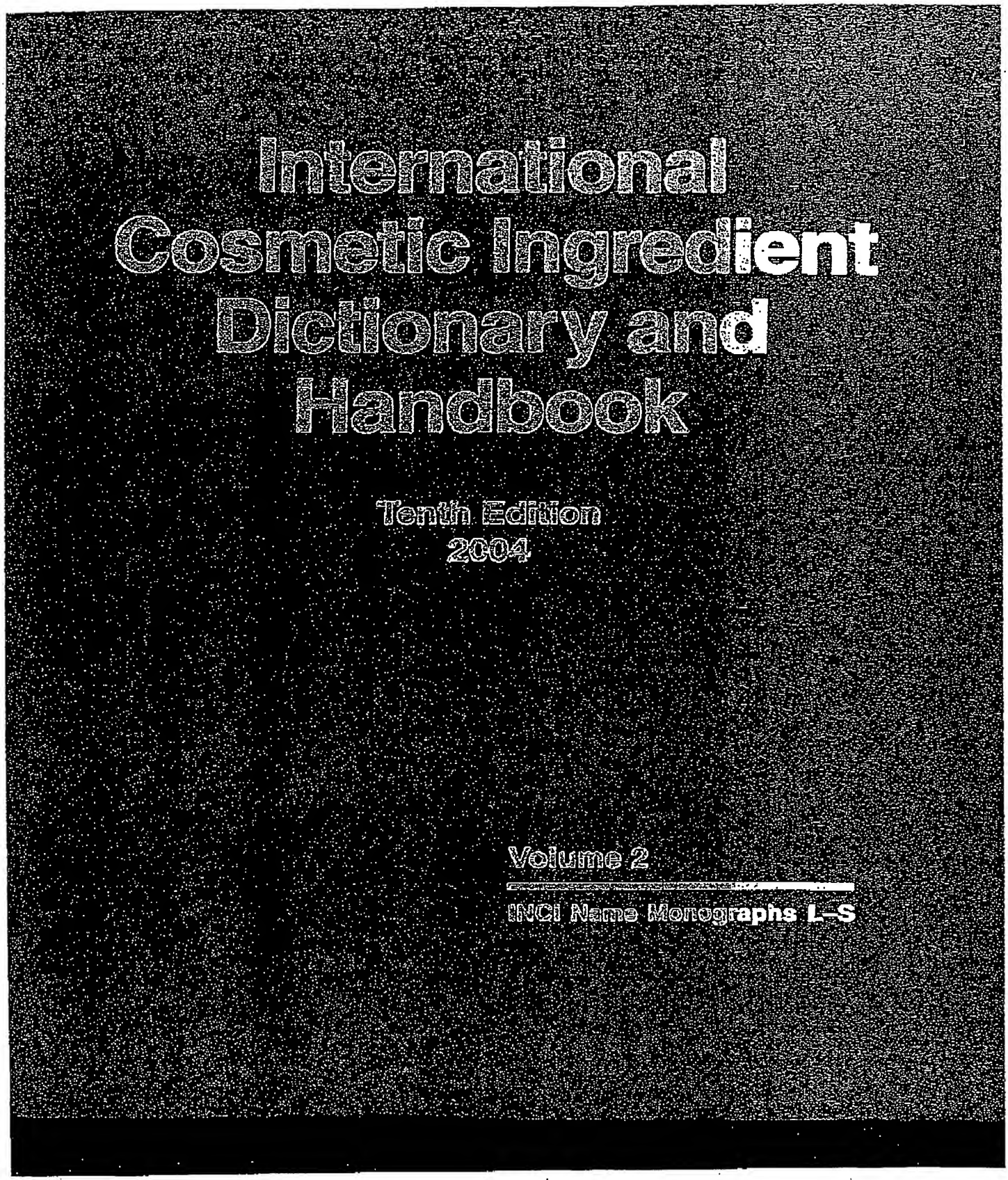

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Technical/Other Name:
2-Propenoic Acid, 2-Methyl-, Methyl Ester, Homopolymer

Trade Names:
BPA-500 (Kobo)
Covabead PMMA (LCW)
Ganzpearl GM-0600 (Presperse)
Jurymer MB-1 (Nihon Junyaku)
Microsphere M (Tomen America)
Microsphere M-100 (Matsumoto Yushi-Seiyaku)
Polymethylmethacrylate (Tagra)
TECHPOLYMER MB-C series (Sekisui)

Trade Name Mixtures:
Crystal Color (Daiya Kogyo)
Iridescent Glitter IF8101 (Mitsubishi Petrochemical)
Jurymer MB-1 (TI) (Nihon Junyaku)
Jurymer MB-1 (UAV) (Nihon Junyaku)
Jurymer MB-1 (UPA) (Nihon Junyaku)
MCP-45 (Presperse)
Pearl Color (Nikko)
PW Covasil S (LCW)
Rainbow Flake, Crystal (Daiya Kogyo)
Tagravit A1 (Tagra)
Tagravit A2 (Tagra)
Tagravit E1 (Tagra)
Tagravit F1 (Tagra)
Tagrol B1 (Tagra)
Tagrol EP01 (Tagra)
Tagrol H1 (Tagra)

POLYMETHYL METHACRYLATE/ POLYPENTAERYTHRITYL TEREPHTHALATE/STEARATE/PALMITATE LAMIATED POWDER

Definition: Polymethyl Methacrylate/ Polypentaerythrityl Terephthalate/Stearate/ Palmitate Lamiated Powder is the powder of the laminated film of Polymethyl Methacrylate and Polypentaerythrityl. *See "Regulatory and Ingredient Use Information," regarding use of Japan Trivial names in Volume 1, Introduction, Part A.*

Information Source: JCLS

Chemical Class: Synthetic Polymers

Function: Not Reported

POLYMETHYLSILSESQUIOXANE

CAS No.: 68554-70-1

JPN Translation:
ポリメチルシルセスキオキサン

Definition: Polymethylsilsesquioxane is a polymer formed by the hydrolysis and condensation of methyltrimethoxysilane.

Chemical Class: Siloxanes and Silanes

Function: Opacifying Agent

Reported Product Categories: Foundations; Blushers (All types)

Trade Names:
AEC Silicone Resin Spheres (A & E Connock)
KMP-590 (Shin Etsu)
KMP-598 (Shin Etsu)
MSP-K050 (Nikko Rica)
Tospearl 2000 (Toshiba)
Tospearl 120A (Toshiba)
Tospearl 130A (Toshiba)
Tospearl 145A (Toshiba)
Wacker - Belsil PMS MK (Wacker-Chemie)

POLYOXYETHYLENE CETYL STEARYL DIETHER

Definition: *See "Regulatory and Ingredient Use Information," regarding use of Japan Trivial names in Volume 1, Introduction, Part A.*

Information Source: JCLS

Chemical Class: Ethers

Function: Not Reported

POLYOXYISOBUTYLENE/METHYLENE UREA COPOLYMER

Definition: Polyoxyisobutylene/Methylene Urea Copolymer is the polymer formed from the condensation of urea, isobutyraldehyde and formaldehyde.

Chemical Class: Synthetic Polymers

Function: Film Former

POLYOXYMETHYLENE MELAMINE

CAS No.: 9003-08-1

Empirical Formula:
$(C_3H_6N_6 \cdot CH_2O)_x$

Definition: Polyoxymethylene Melamine is a reaction product of melamine and formaldehyde.

Information Sources: 21CFR175.105, 21CFR175.300, 21CFR175.320, 21CFR177.1200, 21CFR177.1460, 21CFR177.2260, 21CFR177.2470, 21CFR181.22, 21CFR181.30, CIR: [I] JACT-14(5)1995, TSCA

Chemical Class: Synthetic Polymers

Function: Film Former

Technical/Other Names:
Melamine/Formaldehyde Resin
1,3,5-Triazine-2,4,6-Triamine, Polymer with Formaldehyde

POLYOXYMETHYLENE MELAMINE UREA

CAS No.: 25036-13-9

Empirical Formula:
$(C_3H_6N_6 \cdot CH_4N_2O \cdot CH_2O)$

Definition: Polyoxymethylene Melamine Urea is a reaction product of urea, Melamine (q.v.) and formaldehyde.

Information Source: TSCA

Chemical Class: Synthetic Polymers

Function: Bulking Agent

Technical/Other Names:
Carbamide-Formaldehyde-Melamine Copolymer
Urea/Melamine/Formaldehyde Resin
Urea, Polymer with Formaldehyde and 1,3,5-Triazine-2,4,6-Triamine

Trade Name:
3M Brand PMMU Capsules (3M)

POLYOXYMETHYLENE UREA

CAS Nos.	EINECS No.
9011-05-6	
68611-64-3	271-898-1

Empirical Formula:
$(CH_4N_2O \cdot CH_2O)_x$

Definition: Polyoxymethylene Urea is a reaction product of urea and formaldehyde.

Information Sources: BAN, 21CFR175.105, 21CFR175.300, 21CFR177.1200, 21CFR177.1650, 21CFR177.1900, 21CFR181.30, CIR: [SQ] JACT-14(3)1995, INN, MI-13(7657), MI-13 (9936), TSCA

Chemical Class: Synthetic Polymers

Function: Bulking Agent

Reported Product Categories: Blushers (All types); Face Powders; Eye Shadows; Rouges; Lipsticks

Technical/Other Names:
Carbamide-Formaldehyde Copolymer
Polynoxylin
Urea-Formaldehyde Resin
Urea, Polymer with Formaldehyde

Trade Name:
3M Brand PMU Capsules (3M)

Trade Name Mixtures:
AEC Jojoba Oil Microencapsulated (A & E Connock)

The inclusion of any compound in the *Dictionary and Handbook* does not indicate that use of that substance as a cosmetic ingredient complies with the laws and regulations governing such use in the United States or any other country.

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